

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BRANDI LESTER)	CASE NO.:
3678 West 117th Street, Down)	
Cleveland, Ohio 44111)	
)	
and)	MAGISTRATE JUDGE:
)	
SAMANTHA STOTTELMIRE)	<u>COMPLAINT</u>
2810 Cromwell Drive)	
Lorain, Ohio 44052)	(Jury Demand Endorsed Herein)
)	
Plaintiffs,)	
)	
vs.)	
)	
AGMENT LLC)	
d/b/a THE BRASS POLE)	
639 Oberlin Elyria Road)	
Elyria, Ohio 44035)	
)	
and)	
)	
HARLEY ROWE)	
639 Oberlin Elyria Road)	
Elyria, Ohio 44035)	
)	
Defendants.)	

Now come Plaintiffs, Brandi Lester and Samantha Stottlemire, by and through counsel, and for a Complaint against Defendants Agment LLC d/b/a The Brass Pole (“The Brass Pole”) and Harley Rowe (“Rowe”), state and allege the following:

INTRODUCTION

1. Plaintiffs bring this lawsuit as a result of Defendants’ failure to pay Plaintiffs minimum wage for all of the hours they worked, and overtime compensation at the rate of one and one-half times their regular rate of pay for all of the hours they worked over 40 each workweek,

in violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201-219, and the Ohio Minimum Fair Wage Standards Act (“OMFWSA”), O.R.C. § 4111.14.

JURISDICTION AND VENUE

2. This Court has jurisdiction over Plaintiffs’ FLSA claims pursuant to 28 U.S.C. § 1331.

3. This Court has supplemental jurisdiction over Plaintiffs’ OMFWSA claims pursuant to 28 U.S.C. § 1367 because the claims are so related to the FLSA claims as to form part of the same case or controversy.

4. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b) because Defendants’ principal places of business are located in Lorain County, Ohio, and a substantial part of the events or omissions giving rise to the claims occurred in Lorain County, Ohio, within this District and Division.

PARTIES

5. At all times relevant herein, Plaintiff Lester was a citizen of the United States and a resident of Cuyahoga County, Ohio

6. At all times relevant herein, Plaintiff Stottlemire was a citizen of the United States and a resident of Lorain County, Ohio.

7. At all times relevant herein, Plaintiffs were employees within the meaning of 29 U.S.C. § 203(e), and O.R.C. § 4111.03(D)(2).

8. At all times relevant herein, Defendant The Brass Pole maintained its principal place of business in Lorain County, Ohio.

9. At all times relevant herein, Defendant Rowe was a citizen of the United States and the owner of Defendant The Brass Pole.

10. At all times relevant herein, Defendant The Brass Pole was an employer within the meaning of 29 U.S.C. § 203(d) and O.R.C. § 4111.03(D)(2).

11. At all times relevant herein, Defendant Rowe was an employer within the meaning of 29 U.S.C. § 203(d) and 29 CFR § 825.104(d), in that he acted directly and/or indirectly in the interest of Defendant The Brass Pole in relation to Plaintiffs. Moreover, he had operational control over significant aspects of The Brass Pole's day-to-day functions, including compensation of employees.

12. At all times relevant herein, Defendants were an enterprise within the meaning of 29 U.S.C. § 203(r).

13. At all times relevant herein, Defendants were an enterprise engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § 203(s)(1).

14. At all times relevant herein, Defendants were a joint employer and/or single enterprise within the meaning of 29 U.S.C. §§ 203(r) and 207(b), as they have an interrelation of operations, common business purpose and activities, common management, common control of labor relations, and common ownership and financial control.

15. At all times relevant herein, Plaintiffs were employees engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. §§ 206-207.

FACTUAL ALLEGATIONS
(Failure to Pay Overtime Compensation)

16. Defendants operate a night club in Elyria, Ohio in which the primary service offered to patrons is exotic dancing entertainment.

17. Plaintiffs were employed by Defendants as exotic dancers.

18. Plaintiff Lester was employed by Defendants between approximately October 2013 and February 2014 and between May 2014 and February 2015.

19. Plaintiff Lester worked approximately 28 hours per week during her first nine weeks of employment with Defendants, and approximately 42 hours per week on average thereafter.

20. Plaintiff Stottlemire was employed by Defendants between approximately August 2014 and December 2014.

21. Plaintiff Stottlemire worked approximately 42 hours per week on average throughout her employment with Defendants.

22. Defendants misclassified Plaintiffs as independent contractors rather than as employees.

23. The only compensation Plaintiffs received for their work for Defendants was in the form of tips they received from patrons.

24. Each workday, Plaintiffs were required to “tip out” money to the house, which was kept by Defendants. For example, Plaintiffs were required to pay to the house \$20.00 for the first table dance, and \$5.00 for each table dance thereafter. Plaintiffs Lester and Stottlemire were required to pay \$50.00 of their tips for each 15-minute use of the VIP room and \$100.00 of their tips for each 30-minute use of the VIP room. Plaintiffs were only permitted to keep tips for table dances and use of the VIP room that were above and beyond the aforementioned tip outs to the house.

25. Defendants labeled the tips Plaintiffs were permitted to keep for table dances and use of the VIP room as “service charges,” however, they were never included in Defendant’s gross receipts. Rather, Patrons give this money in cash directly to Plaintiffs, and Plaintiffs later distributed the aforementioned tip out amounts to Defendants.

26. Plaintiffs were economically dependent on Defendants, and Plaintiffs were not in

business for themselves.

27. Defendants had control over the manner and means by which Plaintiffs performed their work, including but not limited to requiring them to work on certain days and fining them if they did not work those days, requiring them to work certain weekdays in order to be able to work on weekends and, requiring Plaintiffs to abide by a long list of permitted and prohibited conduct and clothing choices. *See Exhibit 1.*

28. Defendants' capital investments significantly outweighed the expenditures of Plaintiffs.

29. The opportunities of profit or loss of Plaintiffs were established unilaterally by Defendants. Moreover, Plaintiffs were not permitted to work as exotic dancers at other night clubs.

30. Plaintiffs were employed in full-time permanent positions.

31. Plaintiffs performed routine tasks that were part of Defendants' normal business operations and were not required to have any experience prior to working for Defendants.

32. The work performed by Plaintiffs constituted an essential part of Defendants' business operations.

33. As a result of being misclassified as independent contractors, Plaintiffs were not paid any wages by Defendants, including the applicable minimum wage and any overtime compensation for the hours they worked over 40 each workweek.

34. Plaintiffs regularly worked more than 40 hours per week, but Defendants failed to pay them overtime compensation for the hours they worked over 40 each workweek.

35. Defendants knowingly and willfully failed to pay Plaintiffs minimum wages and overtime compensation.

(Failure to Keep Accurate Records)

36. Upon information and belief, Defendants failed to make, keep and/or preserve accurate records of all of the hours worked by Plaintiffs.

37. As a result of Defendants' record-keeping practices, the work performed by Plaintiffs is unrecorded in Defendant's time and earnings records.

COUNT ONE
(Fair Labor Standards Act Violations)

38. Plaintiffs incorporate by reference the foregoing allegations as if fully rewritten herein.

39. Defendants' misclassification of Plaintiffs as independent contractors violated the FLSA, 29 U.S.C. §§ 201-219.

40. Defendants' failure to pay Plaintiffs the applicable minimum wage for all of the hours they worked each workweek violated the FLSA, 29 U.S.C. §§ 201-219.

41. Defendants' failure to pay Plaintiffs overtime compensation at the rate of one and one-half times their regular rate of pay for all of the hours they worked over 40 each workweek violated the FLSA, 29 U.S.C. §§ 201-219.

42. Defendants' failure to keep records of all of the hours worked each workday and the total hours worked each workweek by Plaintiffs violated the FLSA, 29 CFR 516.2(a)(7).

43. By engaging in the above-mentioned activities, Defendants willfully, knowingly and/or recklessly violated the provisions of the FLSA.

44. As a result of Defendants' practices and policies, Plaintiffs have been damaged in that they have not received overtime wages due to them pursuant to the FLSA.

COUNT TWO
(Ohio Minimum Wage Standards Act Violations)

45. Plaintiffs incorporate by reference the foregoing allegations as if fully rewritten herein.

46. Defendants' misclassification of Plaintiffs as independent contractors violated the OMFWSA, O.R.C. § 4111.14.

47. Defendants' failure to pay Plaintiffs the applicable minimum wage for all of the hours they worked each workweek violated the OMFWSA, O.R.C. § 4111.14.

48. Defendants' failure to keep records of all of the hours worked each workday and the total hours worked each workweek by Plaintiffs violated the OMFWSA, O.R.C. § 4111.08.

49. By engaging in the above-described practices and policies, Defendants willfully, knowingly and/or recklessly violated the provisions of the OMFWSA.

50. As a result of Defendants' practices and policies, Plaintiffs have been damaged in that they have not received wages due to them pursuant to the OMFWSA.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Honorable Court:

A. Award Plaintiffs actual damages for unpaid overtime compensation and minimum wages;

B. Award Plaintiffs liquidated damages equal in amount to the unpaid overtime compensation found due to Plaintiffs under the FLSA;

C. Award Plaintiffs liquidated damages calculated as an additional two times the amount of unpaid minimum wages found due to Plaintiffs under the OMFWSA;

D. Award Plaintiffs pre- and post-judgment interest at the statutory rate;

E. Award Plaintiffs attorneys' fees, costs, and disbursements; and

F. Award Plaintiffs further and additional relief as this Court deems just and proper.

Respectfully submitted,

/s/ Sonia M. Whitehouse
Anthony J. Lazzaro (0077962)
Sonia M. Whitehouse (0088684)
The Lazzaro Law Firm, LLC
920 Rockefeller Building
614 W. Superior Avenue
Cleveland, Ohio 44113
Phone: 216-696-5000
Facsimile: 216-696-7005
anthony@lazzarolawfirm.com
sonia@lazzarolawfirm.com
Attorneys for Plaintiffs

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

/s/ Sonia M. Whitehouse
Attorney for Plaintiffs

TALENT CONDITIONS FOR LEASING THE PREMISES

WE EXPECT YOU TO CARRY YOURSELF WITH CLASS AND SEX APPEAL!

- KEEP YOUR OUTFITS THOROUGHLY CLEAN AT ALL TIMES.
- CHANGE YOUR OUTFITS, DO NOT WEAR THE SAME OUTFIT ALL NIGHT. ONE OUTFIT MAY WORK FOR YOU, AND ANOTHER WON'T, SO CONTINUE TO CHANGE YOUR OUTFIT PERIODICALLY DURING YOUR SHIFT.
- ALWAYS CONDUCT YOURSELF IN A MATURE AND CLASSY STYLE.
- DURING ROTATION YOUR ARE REQUIRED TO DANCE AND PERFORM ON STAGE, WHETHER THERE IS ONE CUSTOMER OR FIFTY. YOU WILL BE DANCING TO FILL YOUR LEASE CONTRACT WITH NO EXCEPTIONS.
- THERE IS NO CHEWING GUM ON STAGE, BECAUSE OF SAFETY HAZARDS.
- NO DRINKS WHILE ON STAGE.
- THE DJ WILL ANNOUNCE WHEN YOU ARE ON STANDBY. PLEASE LISTEN FOR YOUR NAME TO BE ANNOUNCED. YOU ARE PUT ON STANDBY FOR A REASON, WHICH IS TO PREPARE FOR YOUR ROTATION ON STAGE. MAKE SURE EVERYTHING IS DONE PRIOR TO YOUR ROTATION.
- YOU ARE ON STAGE FOR A MINIMUM OF TWO SONGS. THIRTY SECONDS INTO THE SECOND SONG, YOU SHOULD BE DOWN TO A LEGAL THONG (THREE FINGERS WIDE) OR TO YOUR BOTTOMS. THIS DOES NOT MEAN THAT YOU JUST PULL YOUR OUTFIT DOWN AROUND YOUR BELLY. YOUR BOTTOMS SHOULD BE THE ONLY ITEM REMAINING.
- YOU ARE REQUIRED TO ATTEND AND PARTICIPATE IN EVERY SINGLE SPECIAL. AGAIN, YOU ARE NOTIFIED BY THE DJ TO STANDBY. THERE IS NO REASON TO MISS IT. SPECIALS ARE DONE FOR A REASON. THEY GIVE YOU AN OPPORTUNITY TO MAKE MONEY, AND YOUR LEASE PREFERS IT.
- BACHELOR AND BIRTHDAY SPECIALS ARE IMPORTANT. WE WILL CONTINUE TO HAVE THESE TYPES OF PARTIES AND THE ROUTINE IS THE SAME. EVERY SINGLE GIRL WILL TAKE A TURN DANCING FOR THE PARTY. DO NOT HESITATE OR CHAT WHILE ON STAGE. FOCUS ON THE CUSTOMER, LISTEN TO THE DJ AND SMILE. THESE PARTIES DO TWO THINGS, THEY PROMOTE FUTURE BUSINESS FOR YOU AND ENTICE THE SURROUNDING CUSTOMERS WATCHING TO POSSIBLY GET A DANCE

FROM YOU. SO WHILE YOU ARE ON STAGE, YOU ARE TO PERFORM AT YOUR BEST.

- AGAIN LISTEN TO THE DJ AT ALL TIMES. WHEN YOUR ROTATION IS FINISHED ON STAGE, YOU MUST GET DRESSED QUICKLY AND IMMEDIATELY LEAVE THE STAGE. YOU MUST BE FULLY DRESSED BEFORE LEAVING THE STAGE.
- ONCE YOU LEAVE THE STAGE FOR A 2- FOR- 30 SPECIAL, HALF OF YOU WILL TOUR THE BAR IN ONE DIRECTION AND THE REST IN THE OTHER DIRECTION. DO NOT SIT OR STAND AROUND. YOU ARE REQUIRED TO ASK EVERY SINGLE CUSTOMER IN THE BAR TO SIT BESIDE THEM, REGARDLESS OF WHO ELSE HAS ASKED THAT SAME CUSTOMER, YOU NEVER KNOW AS TO WHAT A CUSTOMER WILL LIKE ABOUT YOU OR SOMEONE ELSE.
- WHILE SITTING WITH A CUSTOMER, YOU WANT THAT CUSTOMER TO BUY YOU A DRINK. AFTER 15 MINUTES, IF THAT SAME CUSTOMER HAS NOT BOUGHT YOU A DRINK OR DANCE, POLITELY LEAVE THE TABLE. JUST LET HIM KNOW YOU WILL CHECK ON HIM IN A LITTLE BIT. YOU ARE HERE TO MAKE MONEY NOT SIT ALL NIGHT. ON THE SAME NOTE, IF YOU LEAVE THE TABLE DO NOT CARRY YOUR DRINK WITH YOU. LEAVE IT THERE AND THE NEXT CUSTOMER YOU SIT WITH WILL BUY YOU ANOTHER. BE TACTFUL, JUST DONT PLOP DOWN NEXT TO HIM AND ASK HIM FOR ANOTHER DRINK. SMILE, FLIRT, AND ENTICE HIM.
- YOU SHOULD NEVER REFUSE A DRINK. IF YOU ARE OF AGE AND DO NOT FEEL THE NEED TO DRINK, ORDER A NON-ALCOHOLIC BEVERAGE. YOU LEASE SPACE HERE TO ENTERTAIN NOT VACATION.
- TABLE DANCES ARE NOT ALLOWED.
- ROLL CALL IS VERY IMPORTANT. ROLL CALL IS OUR WAY OF DETERMINING WHO IS OR IS NOT HERE TO LEASE SPACE. THIS WILL OCCUR AT THE BEGINNING OF EVERY LEASE TIME IF YOU ARE NOT HERE YOUR SPACE MAY BE LEASED TO SOMEONE ELSE. YOUR LEASE IS YOUR LEASE. IF YOU LEASE SPACE, THEN BE HERE. DO NOT BE LATE.
- EVERY NIGHT THE CLUB WILL PLAY A CERTAIN TYPE OF MUSIC THIS IS THE MUSIC YOU WILL DANCE TO. ON OCCASION THE DJ WILL BE ALLOWED TO PLAY OTHER TYPES AND SPECIAL REQUESTS, BUT DONT EXPECT IT. THE MUSIC WILL FIT THE CROWD AND THE NIGHTLY THEME. REGARDLESS OF WHAT YOU DANCE TO, IT COMES DOWN TO MAKING MONEY. DANCE, SMILE, MAKE YOUR MONEY, AND GO HOME HAPPY.
- YOU ARE REQUIRED TO WEAR A COMPLETE OUTFIT AT ALL TIMES. THIS INCLUDES SHOES! YOU ARE REQUIRED TO WEAR FOUR ARTICLES OF CLOTHING: 1.) YOUR TOP 2.) YOUR PASTIES 3.) YOUR BOTTOMS AND

4.) EITHER SOCKS, NYLONS, THIGH HIGHS, KNEE HIGHS, TIE-UPS, OR GLOVES. YOU ARE ALSO REQUIRED TO WEAR A GARTER. THE GARTER IS NOT A PART OF YOUR FOUR ARTICLES OF CLOTHING.

- WHEN YOU LEAVE THE MAIN FLOOR TO FRESHEN UP OR TO CHANGE YOUR OUTFIT YOU MUST FIRST NOTIFY THE DJ AND THE MANAGER ON DUTY. AFTER DOING SO YOU HAVE EXACTLY 10 MINUTES AND THEN RETURN TO THE FLOOR.

- WHEN ARRIVING TO WORK YOU MUST IMMEDIATELY MAKE YOUR WAY TO THE DRESSING ROOM AND PROCEED TO GET READY. YOU ARE ALLOWED 30 MINUTES TO GET READY. AFTER YOU ARE COMPLETELY DRESSED AND READY TO WORK THE FLOOR, SIGN IN WITH THE MANAGER ON DUTY. ONCE YOU ARE SIGNED IN YOU ARE REQUIRED TO WORK A MINIMUM OF SIX HOURS.

- ONCE SIGNED IN WITH THE MANAGER YOU MUST IMMEDIATELY SIGN IN WITH THE DJ FOR ROTATION.

- IF AT ANYTIME YOU LEAVE THE FLOOR, YOU MUST NOTIFY THE DJ AND MANAGER, WHETHER YOUR GIVING A DANCE, A VIP, FRESHING UP, GOING TO THE RESTROOM, OR GOING OUTSIDE TO SMOKE.

- NO SUB LEASING.

- HYGEINE: WE EXPECT BIKINI LINES TO BE PROPERLY SHAVED OR TRIMMED, FINGER NAILS AND TOE NAILS TO BE PROPERLY TRIMMED AND DONE IN AN ATTRACTIVE MANNER, CLOTHES TO BE TAKEN HOME AND WASHED DAILY, BODY AND HAIR TO BE WASHED DAILY, HAIR TO BE STYLED, AND MAKE-UP APPLIED BEFORE PERFORMING.

- NO OIL OR OIL BASED PRODUCTS TO BE WORN ON STAGE!

- NO STRADDLING OR GRINDING ON ANY PART OF THE CUSTOMERS CROTCH.

- NO SITTING ON A CUSTOMERS LAP.

- ONE FOOT MUST BE ON FLOOR AT ALL TIMES, EVEN IN THE PRIVATE DANCE AREA AND VIP ROOMS.

- TIPS ARE TO BE PLACED IN THE GARTER (IF FULLY DRESSED) OR HAND ONLY.

- NO GIRL ON GIRL CONTACT. THIS MEANS NO CONTACT WITH OTHER ENTERTAINERS, BARTENDERS, OR CUSTOMERS.

- NO ASKING FOR DRINKS, FOOD, OR TIPS. THIS IS SOLICITATION.

- NO NEGATIVE TALK ABOUT OTHER LEASEES OR LANDLORDS.
- WHEN LEAVING THE CLUB ALL GIRLS MUST BE ESCORTED BY SECURITY.
- DO NOT SIMULATE ANY TYPE OF SEXUAL ACTS. THIS IS PROHIBITED BY LAW.
- DO NOT TOUCH YOURSELF IN AN ILLEGALLY-SEXUALLY SUGGESTIVE MANNER.
- AGAIN NO DRUGS PERMITTED ON PREMISES UNLESS PRESCRIBED BY A PHYSICIAN AND THEY MUST BE IN THE ORIGINAL CONTAINERS.
- NO CONSUMPTION OF ALCOHOL ANYWHERE ON THE PREMISES BY ANYONE UNDER THE AGE OF 21. IF CAUGHT YOUR CONTRACT WILL BE TERMINATED.
- THE REPUTATION OF THE CLUB IS NOT TO BE HARMED IN ANY WAY.
- LEGAL PROOF OF AGE IS REQUIRED FOR LESSORS RECORDS.
- NO BOYFRIENDS, HUSBANDS, OR SIGNIFICANT OTHERS ALLOWED IN CLUB WHILE YOU ARE LEASING SPACE.
- NEVER ARGUE WITH A CUSTOMER, GET A MANAGER IF A PROBLEM ARISES.
- NO CELL PHONES OUTSIDE OF THE DRESSING ROOM.
- NEVER MAKE A DATE WITH A CUSTOMER.
- NO FIGHTING FOR ANY REASON.
- CONTROL YOUR ALCOHOL CONSUMPTION - NO DRUNKENESS.
- PAY ALL LEASE FEES AND FINES BEFORE LEAVING.
- MUST HAVE LANDLORDS APPROVAL BEFORE LEAVING.
- MUST NOTIFY THE DJ IMMEDIATELY AFTER THE APPROVAL OF THE LANDLORD ON LEAVING THE PREMISES.
- PHONE NUMBERS ARE NEVER TO BE EXCHANGED WITH CUSTOMERS.
- DO NOT THREATEN FELLOW EMPLOYEES.

- NO ALCOHOL IS TO BE BROUGHT INTO THE CLUB. THIS INCLUDES ANY OTHER DRINKS THAT MAY CONTAIN ALCOHOL, SUCH AS POP/SODA, TEA, JUICE, COFFEE, ENERGY DRINKS ETC.

- THONGS MUST BE THREE FINGERS WIDE! IF THONG IS NOT THREE FINGERS WIDE YOU MUST WEAR SOMETHING ELSE TO COVER IT OR WEAR ANOTHER THONG THAT IS THREE FINGERS WIDE.

- YOUR BUTTOCKS MUST BE COVERED AT ALL TIMES WHEN ON THE FLOOR.

- REMEMBER TO APPLY PASTIES BEFORE LEAVING THE DRESSING ROOM. YOU MUST REAPPLY THROUGH OUT THE NIGHT AS NEEDED. WE DO NOT SUPPLY THIS, YOU MUST PURCHASE YOUR OWN AND KEEP IT WITH YOU.